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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEANNIE ATIENZA, individually and as co-)	Case No.: 3:19-cv-03440
successor-in-interest to Decedent)	
LAUDEMER ARBOLEDA; and PHILLIP)	UPDATED FURTHER CASE
ARBOLEDA, individually and as co-)	MANAGEMENT CONFERENCE
successor-in-interest to Decedent)	STATEMENT
LAUDEMER ARBOLEDA)	
)	Conference Date: October 8, 2020
Plaintiffs,)	
)	Time: 10:00 a.m.
v.)	
)	Courtroom: Courtroom 3, 17 th Fl.
ANDREW HALL, individually; and DOES 1-)	
50, inclusive.)	Judge: Hon. Richard Seeborg
)	
Defendants.)	Via Courtcall
)	
)	
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The parties to the above-entitled action jointly submit this updated JOINT CASE MANAGEMENT STATEMENT pursuant to the *Standing Order for All Judges of the Northern District of California* and Civil Local Rule 16-9.

1. Update re Factual Discovery

Plaintiff's Position:

Since the court issued its Order granting Plaintiff's request to extend fact discovery Plaintiff has been working to schedule depositions, an inspection of the decedent's Honda he was driving at the time he was killed and the production of certain video and/or audio items of discovery.

Defendant's Position:

Defendant has, at Plaintiff's request, re-produced numerous records that were previously lost by Plaintiff's counsel. Unfortunately, this has required Defendant's counsel to devote his time and that of his paralegal to this task. This task is nearly completed.

Defendant's counsel has also been diligently working with Plaintiff's counsel to schedule depositions. Because most of the witnesses sought by Plaintiff are employees of Contra Costa County, this process has been complicated and time-consuming for Hall's counsel. Recently, a Settlement Conference was re-scheduled *sua sponte* by the Court in a different matter to October 5. As a consequence, two depositions previously set for that date have to be re-scheduled.

Depositions:

Plaintiff's Position:

To date, a number of depositions have been calendared however, Defendant recently advised that he has limited availability in October and needed to reschedule previously scheduled depositions that were set for October 5, 2020. Thereafter, Defendant proposed amending the pre-trial schedule so as to allow for additional time to complete fact discovery due to his limited availability. At no point in time was there any mention of the underlying criminal investigation of Defendant Hall, which is being conducted by the County, being a consideration or basis for an extension of fact discovery or moving any of the other pre-trial dates. As of today's date, the following depositions are on calendar:

Deponent	Date	Time
Randy Arboleda	10/02/20	10:00 am
Jennifer Leong	10/02/20	1:30 am
Def Andrew Hall	10/13/20	9:00 am
Deputy Muller	10/13/20	3:00 pm
Katie Polony	10/14/20	9:00 am
Ron Dominguez	10/14/20	1:00 pm
Elsa Cerventes	10/15/20	9:00 am
Jerald Walker	10/15/20	1:00 pm
Sgt. Martin	10/16/20	10:00 am
Deputy Maka	10/16/20	1:00 pm
Deputy Caruso	10/16/20	3:00 pm

1 In addition, Plaintiff has noticed and intends to take depositions of the following
2 witnesses:

- 3 1. Ride Along Slaughter and Deputy Ingersoll;
- 4 2. (2) County witnesses regarding Defendant Hall's training concerning the use of
5 deadly force and making car stops.

6 Defendant Hall's Position:

7 Despite the impediments to scheduling depositions, including pre-existing conflicts, the
8 parties have been able to schedule many, but not all of the depositions sought by Plaintiff. At
9 this juncture, the parties still need to schedule the depositions of Detective Matthew Ingersoll,
10 Madison Slaughter, and Contra Costa County (on two topics).

11 **Defendant Hall's Deposition:**

12 Plaintiff's Position:

13 Today, it was brought to Plaintiff's attention that Defendant Hall is concerned about
14 being deposed due to the status of the Contra Costa County District Attorney's criminal
15 investigation into the underlying incident. Defendant represents that the District Attorney's
16 decision to prosecute Defendant Hall is forthcoming and may be issued by November 1, 2020.
17 The criminal investigation has been ongoing for close to two years and the Defendant never
18 raised this as a barrier to being deposed. It is Plaintiff's position the Defendant can simply plead
19 the fifth at his deposition and/or trial as neither party in this instant litigation control when and
20 whether the District Attorney will in fact render a decision by the reported November 1, 2020
21 date. To continue the trial date based upon the idea a decision is supposedly forthcoming is
22 unduly prejudicial to Plaintiff.

23 Defendant Hall's Position:

24 This past Monday, in the course of attempting to schedule the deposition of District
25 Attorney Senior Inspector Michael Morley, which was requested by Plaintiff but mysteriously
dropped in the course of preparing this CMC statement, Hall learned that the District Attorney's
Office objected to the deposition of Senior Inspector Morley at this time as that office has not yet

1 closed its investigation into the underlying incident. Until that time, Hall was not aware that the
2 District Attorney's investigation had not been closed. Today (October 1), Hall learned that the
3 decision respecting whether to close this investigation should be made on or before November 1,
4 2020. As discussed below, because of Fifth Amendment issues, Hall's deposition needs to be
5 postponed in light of the still-open District Attorney investigation.

6 **Inspection of Decedent's Honda:**

7 Plaintiff noticed but Defendant has not yet confirmed a date and time for the inspection
8 of Decedent's Honda.

9 **(Re) Production of Discovery Materials:**

10 Plaintiff's Position:

11 Defendant recently produced some of the underlying video and audio materials which
12 were referred to in the County's investigatory reports. Plaintiff paid for the production of the
13 materials and is awaiting an invoice from the Defendant reflecting this charge. Defendant has
14 balked at furnishing an invoice and/or receipt for the charge. Plaintiff continues to await the
15 production of the remaining materials.

16 Defendant Hall's Position:

17 The referenced materials were re-produced to Plaintiff after the original production was
18 lost by Plaintiff's counsel. Hall has only charged Plaintiff \$400 for two hours of paralegal time
19 for this re-production even though the paralegal expended much more time. Hall objects to
20 having to devote additional time to preparing the invoice. Further, when Hall questioned why
21 Plaintiff's counsel would need an invoice, the response was so that counsel could bill his client.
22 Hall respectfully suggests that it is inappropriate to charge Plaintiff for costs incurred solely as
23 the result of the negligence of counsel.
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1 2. Scheduling Issues

2 Plaintiff's Position:

3 The parties have met and conferred regarding the current pre-trial and trial schedule.
4 Plaintiff is willing to agree to an additional modification of the pre-trial schedule by extending
5 the non-expert discovery deadline from October 16, 2020 to November 1, 2020 in order to
6 accommodate the Defendant's limited availability. Likewise, Plaintiff proposes setting the expert
7 rebuttal deadline for December 4, 2020 with the close of expert discovery continued to
8 December 18, 2020. Plaintiff does not believe any additional modifications to the pre-trial and/or
9 trial schedule are necessary. Furthermore, Plaintiff does not believe the status of expert discovery
10 is a hindrance to Defendant preparing his anticipated dispositive motion as an expert cannot
11 create a material dispute of fact nor resolve one.

12 Plaintiff is amenable to reworking the pre-trial dates however, she is staunchly opposed
13 to moving the trial date.

14 Defendant Andrew Hall's Position:

15 Despite the diligence of the parties, it has proven impossible to complete fact discovery
16 within the extended fact discovery period. Currently, there are four depositions that cannot be
17 completed prior to October 16. In addition, Hall's deposition needs to be postponed until after
18 the District Attorney's Office announces whether it will close its investigation or not. Hall
19 understands that this decision should be made on or before November 1. In light of this issue
20 and others, Hall requests that the Court extend fact discovery until November 20, 2020 and make
21 conforming changes to the remaining schedule, which result in a trial date of May 31, 2021.
22 There is good cause to grant this short extension of fact discovery and related changes in the case
23 schedule.
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1 As indicated above, Hall was not aware until recently that the District Attorney's
2 investigation remains open. Because the investigation is still open, if Hall is deposed now, he
3 must decide whether to invoke his Fifth Amendment rights at that deposition. If he does invoke
4 those rights, the Court could draw an adverse inference against him. If he does not, he
5 jeopardizes his ability to assert his Fifth Amendment rights later. If the Court extends fact
6 discovery until after the District Attorney's decision, which is anticipated to occur on November
7 1, 2020, Hall would not face this "lose-lose" situation. Plaintiff has no valid basis to oppose this
8 short extension, which would not prejudice her.

9 In addition, Plaintiff's proposed two-week extension of fact discovery is inadequate for
10 other reasons. Defendant's counsel has prior hard commitments for every day of that period
11 except one (October 20). Even as to that date, he has other obligations. As Plaintiff did not
12 disclose this two-week extension of fact discovery during the meet and confer, these prior
13 conflicts were not discussed by the parties.

14 There is also good cause to amend the current case schedule generally because it is
15 impractical and unworkable. Under the current schedule, expert discovery is to be completed on
16 December 11, which is the date after Hall must file his summary judgment motion (December
17 10). This makes no sense and is contrary to the parties' decision to schedule expert discovery
18 before summary judgment. Ironically, Plaintiff's proposed extension of expert discovery to
19 December 18 only exacerbates this problem. The current schedule is also fails to provide
20 adequate time for the Court to rule on Hall's summary judgment motion and the parties to
21 respond to that ruling. Under the present schedule, there is less than a month from the hearing
22 date on that motion and the pre-trial conference.
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To address these issues, Defendant proposes the following revised schedule:

<u>Event</u>	<u>Current Date</u>	<u>Proposed Date</u>
Close of fact discovery:	October 16, 2020	November 20, 2020
Initial Expert Reports:	November 11, 2020	December 9, 2020
Rebuttal Expert Disclosure:	None	December 23, 2020
Close of expert discovery:	December 11, 2020	January 22, 2021
Deadline to file dispositive motions:	December 10, 2020	February 25, 2021
Deadline to hear dispositive motions:	January 14, 2021	April 1, 2021
Pretrial conference:	February 10, 2021	May 10, 2020
Trial:	February 22, 2021	May 31, 2020

Dated: October 1, 2020

/s/ Adante D. Pointer

Counsel for Plaintiff JEANNIE ATIENZA

Dated: October 1, 2020

/s/ D. Cameron Baker

D. CAMERON BAKER, Deputy County Counsel
Counsel for Defendant ANDREW HALL